

OA 91 Criminal Complaint

United States District Court

NORTHERN

DISTRICT OF

UNITED STATES OF AMERICA

V.

WALTER PALMA

CRIMINAL COMPLAINT

Case Number: _____

ORIGINAL

FILED
AUG 5 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

(Name and Address of Defendant)

3 0 7 0 5 0 7

BZ

I, the undersigned complainant being duly sworn state that the following is true and correct to the best of my knowledge and belief. On or about November 2, 2005 in San Francisco County, in the Northern District of California defendant(s) did,

(Track Statutory Language of Offense)

See Attachment A

in violation of Title _____ United States Code, Section(s) _____

18 U.S.C. Sec. 922(g)(5) (Illegal Alien in Possession of Firearm)

I further state that I am a(n) Special Agent of ICF and that this complaint is based on the following facts:

See Attachment B

Continued on the attached sheet and made a part hereof:

☒ Yes ☐ No

Approved

As To W.S. Wilson Leung

Form: AUSA

Christopher Merendino

Name/Signature of Complainant

Sworn to before me and subscribed in my presence,

August 5, 2008

Date

at San Francisco California
City and State

HON. BERNARD ZIMMERMAN

U.S. MAGISTRATE JUDGE

Name & Title of Judicial Officer

Signature of Judicial Officer

pal

ATTACHMENT A

Count One

unlawfully, willfully, and knowingly possess a firearm in and affecting interstate commerce while being an alien illegally and unlawfully in the United States.

All in violation of Title 18, United States Code, Section 922(g)(5).

ATTACHMENT B

AFFIDAVIT OF CHRISTOPHER J. MERENDINO

I, CHRISTOPHER J. MERENDINO, Special Agent with Immigration and Customs Enforcement, being duly sworn, do declare and state:

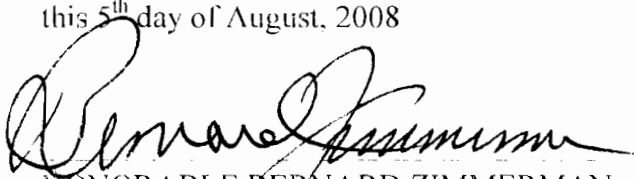
1. I am a Special Agent with Immigration and Customs Enforcement ("ICE") and have been so employed for approximately 6 years. I am presently assigned to ICE's San Francisco office, where I investigate violations of federal law, with a focus on violent crimes and crimes committed by street gangs. During my career with ICE, I have received training on a variety of law enforcement subjects, including violent crimes, gang organization, narcotics trafficking, and criminal procedure. I have also conducted and participated in numerous investigations of violent street crimes. The information set forth below is based on my own investigation or on conversations I have had with other law enforcement officers and from reviewing law enforcement documents.
2. This Affidavit is made in support of a Criminal Complaint charging **WALTER PALMA**, a/k/a "Kapone," with being an illegal alien in possession of a firearm, in violation of Title 18, United States Code, Section 922(g)(5).
3. Because this Affidavit is submitted for the limited purpose of establishing probable cause for an arrest warrant, I have not included each and every fact known to me that supports probable cause for arrest. Rather, I have set forth only the facts that I believe are necessary to support the lawful arrest of the individual listed in this Affidavit.
4. Where statements made by other individuals (including other Special Agents and law enforcement officers) are referenced in this Affidavit, such statements are described in sum and substance and in relevant part. Similarly, where information contained in reports and other documents or records are referenced in this Affidavit, such information is also described in sum and substance and in relevant part.
5. I learned the following from reviewing reports of the San Francisco Police Department (the "SFPD"):
 - a. During the afternoon of on or about November 2, 2005, three officers in an unmarked police car were on patrol in the vicinity of Lakeview Street in San Francisco. Two of the officers saw that the driver of a vehicle (the "Driver") on Lakeview Street failed to have his seat belt buckled. The officers also noticed that the rear passenger window and the rear window of the Driver's car were completely blacked out with tint.

- b. The officers activated their patrol car's lights and sirens signal the Driver to stop. The Driver pulled his vehicle over and the officers stopped their patrol car behind it.
 - c. The three officers got out of their patrol car, and as they approached the Driver's car, each of them saw the moon roof of the Driver's car open. Each officer also saw what appeared to be the muzzle of a gun pointing out of the open moon roof. Because of the Driver's car's tinted windows, the officers could not see inside the vehicle from behind.
 - d. When they noticed the muzzle of the gun pointing out of the open moon roof of the Driver's car, each of the officers shouted a warning to his fellows and took cover. The officers then yelled orders to the occupants of the Driver's vehicle, and as they did so, the officers saw the passenger door of the Driver's vehicle open and an individual with a pony-tail bolt out of the vehicle and run away.
 - e. Two of the officers approached the open passenger door of the Driver's vehicle and saw the Driver in the driver's seat. There was no other occupant in the vehicle. The officers conducted a protective sweep of the vehicle's interior, and found a 9mm Smith & Wesson handgun, serial number A542405, lodged in the moon roof of the vehicle.
 - f. While the two officers were securing the Driver and his vehicle, the third officer pursued the fleeing passenger in the patrol car. Other police officers were called to the scene, and two of these additional officers found **WALTER PALMA** hiding inside a blue receptacle bin located on a nearby playground. **PALMA** wore his hair as a pony-tail, and the three officers who conducted the initial traffic stop of the Driver's vehicle identified him as the individual who fled from the vehicle.
6. I learned the following from speaking with an Inspector assigned to the SFPD's Gang Task Force:
- a. The Inspector has known **WALTER PALMA** for several years and knows his nickname is "Kapone."
 - b. **PALMA** was arrested on or about November 2, 2005 after he was found in the blue receptacle bin, but the case was dismissed prior to any court appearance. Significantly, **PALMA** did not retain, nor was he appointed, a defense attorney in connection with this arrest.

- c. On or about November 4, 2005, the Inspector, wearing a hidden recording device, met with **PALMA** on the street. During this encounter, **PALMA**, among other things, asked the Inspector when he (**PALMA**) was going to get his gun back. **PALMA** also explained to the Inspector that he was not pointing the gun at the police officers, but, rather, was merely trying to hide the gun in the moon roof of the Driver's car.¹
7. I have reviewed the immigration records for **WALTER PALMA**. From my review of these records, I know that **PALMA** is a citizen and native of El Salvador who illegally entered the United States on or about July 4, 1997. **PALMA** sought to adjust his status based on a claim that he was eligible for the immigration benefit of Temporary Protected Status ("TPS"), and was granted the benefit on September 8, 2005. **PALMA** submitted requests to extend his benefit on two occasions and was denied an extension on April 27, 2007. Although **PALMA** had been granted TPS at the time of his arrest on November 2, 2005, TPS did not confer upon him the right to possess a firearm legally in the United States.
8. Based on the foregoing, I hereby assert that probable cause exists to believe that **WALTER PALMA**, a/k/a "Kapone," is in violation of Title 18, United States Code, Section 922(g)(5), specifically, being an illegal alien in possession of a firearm.


CHRISTOPHER J. MERENDINO
Special Agent
Immigration and Customs Enforcement

Sworn to and subscribed before me
this 5th day of August, 2008


HONORABLE BERNARD ZIMMERMAN
UNITED STATES MAGISTRATE JUDGE

¹ I have reviewed a transcript of this recording, which was translated from Spanish into English.

As a result of this recording, **PALMA** was later re-arrested and charged by the San Francisco District Attorney's Office with misdemeanor weapons possession. **PALMA** is presently released on bail and his case is still pending.